

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 7:18-cr-133
 5 Plaintiff, - New Bern, North Carolina
 6 v. - April 11, 2019
 7 DORA MAYBE DAMATTA-RODRIGUEZ, - Sentencing
 8 Defendant. -

9
 10 TRANSCRIPT OF SENTENCING HEARING
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

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Proceedings recorded by mechanical stenography,
 transcript produced by notereading.

1 (Commenced at 2:42 p.m.)

2 THE COURT: We'll take up the last case on
00:00:01 3 the afternoon docket, Dora Rodriguez.

00:00:24 4 MR. KIELMANOVICH: Good afternoon, Your
00:00:27 5 Honor.

00:00:27 6 MR. GORDON: Good afternoon, Your Honor.

00:00:31 7 THE COURT: We don't need an interpreter, do
00:00:36 8 we?

00:00:38 9 MR. GORDON: We do not, Your Honor.

00:00:39 10 THE COURT: You are here because you're an
00:00:42 11 alien, and you voted in our election, and you will be
00:00:45 12 sentenced for that.

00:00:46 13 Have you read the presentence report?

00:00:48 14 THE DEFENDANT: Yes.

00:00:48 15 THE COURT: Have you had enough time to talk
00:00:50 16 with Mr. Gordon to be ready to be sentenced?

00:00:55 17 THE DEFENDANT: Yes.

00:00:56 18 THE COURT: This, like several other cases
00:00:58 19 I've had before me, this occurred in Raleigh, North
00:01:01 20 Carolina. It related to the last election for
00:01:08 21 President. And you knew better, it's clear to me in
00:01:16 22 reading through this. You knew you couldn't vote, but
00:01:20 23 you said you could.

00:01:25 24 You have a criminal record: shoplifting,
00:01:28 25 driving without the proper license, larceny. But the

00:01:33 1 age of the convictions renders them unscorable, so you
00:01:38 2 find yourself in the Criminal History Category I.

00:01:42 3 Your family background is given to me, your
00:01:45 4 health, your education, substance abuse issues all are
00:01:52 5 discussed. I don't think you have any substance abuse
00:01:56 6 issue. No. But your education, your employment
00:01:59 7 history, your financial circumstances. All right. The
00:02:04 8 total offense level is a 4.

00:02:10 9 The advice I receive is a sentence of zero
00:02:13 10 to six months where you face not more than 12 months.
00:02:16 11 Your behavior can be supervised for a year. You are
00:02:20 12 eligible for probation. The fine could be as much as
00:02:23 13 \$100,000, though the guidelines suggest a range of
00:02:26 14 between \$500 and \$9,500. And there's a \$25 special
00:02:31 15 assessment.

00:02:32 16 Mr. Kielmanovich, while I invite the
00:02:35 17 defendant to be seated, I'd like to hear from you. What
00:02:38 18 do you think in this case is the appropriate punishment?

00:02:41 19 MR. KIELMANOVICH: Your Honor, I believe
00:02:42 20 that in this case the Court should consider a small
00:02:46 21 active sentence, even if it's just 24 or 48 hours, a
00:02:50 22 weekend, in jail. I'm making this request because when
00:02:53 23 looking at the facts, the defendant knew that she
00:02:56 24 shouldn't have voted. When she was interviewed by
00:02:58 25 agents, she said that she may have checked the box that

00:03:02 1 she was a U.S. citizen on the form because she wanted to
00:03:06 2 believe that she was a U.S. citizen. I mean, she knew
00:03:09 3 that she couldn't vote.

00:03:11 4 She further stated, and I quote, "Obama said
00:03:15 5 any immigrant, legal or illegal, can vote."

00:03:20 6 This is not a case of somebody that comes
00:03:22 7 and says: I didn't know what I was signing; I don't
00:03:25 8 speak the language. I don't think that's excusable
00:03:28 9 either. But this is clearly a case -- the defendant is
00:03:31 10 a citizen of Panama; she has a green card -- that she
00:03:35 11 wanted to vote. She knew she couldn't vote.

00:03:39 12 There is a process to become a U.S. citizen.
00:03:41 13 You have to go through a background check; you have to
00:03:44 14 pass a test; you have to qualify. Fingerprints are
00:03:47 15 taken. There's an oath of allegiance. There's a number
00:03:51 16 of things that have to happen. This is not something
00:03:53 17 that you feel like I should have the right, and I
00:03:56 18 deserve to do it. Which it looks to me like this is
00:04:02 19 what the defendant thought, that she could just do what
00:04:05 20 she wanted to do.

00:04:05 21 When she was asked by agents if she voted,
00:04:08 22 she said that it was in New Hanover County, that she
00:04:13 23 voted for all the positions that were on the ballot. So
00:04:18 24 she has taken away the right of the electorate to
00:04:22 25 exercise their voice to be heard by her not being a

00:04:26 1 citizen.

00:04:27 2 And I believe that this is just common
00:04:29 3 knowledge all over the world, that you just don't get to
00:04:33 4 go to other countries and vote, particularly in national
00:04:37 5 elections, in elections in which the office of the
00:04:40 6 President is on the ballot.

00:04:42 7 So for that reason, Your Honor, I would ask
00:04:44 8 that you consider, even if it's a small sentence, that
00:04:47 9 it be active because I think it needs to send a message
00:04:51 10 that this defendant shouldn't have done this, and others
00:04:55 11 should be deterred by this.

00:04:57 12 If the Court is not inclined to an active
00:04:59 13 sentence, then I would ask that probation be imposed
00:05:02 14 with a fine also to reflect the seriousness of the
00:05:05 15 offense.

00:05:07 16 I'll leave it in your discretion, Your
00:05:11 17 Honor.

00:05:11 18 THE COURT: Mr. Gordon?

00:05:13 19 MR. GORDON: Thank you, Your Honor. Your
00:05:14 20 Honor, I respectfully disagree with my good friend, Mr.
00:05:19 21 Kielmanovich, on a few points.

00:05:23 22 She did talk about Obama saying that
00:05:28 23 noncitizens could vote. I don't know if the Court heard
00:05:32 24 about this at the time. I had not, but I subsequently
00:05:36 25 have.

00:05:36 1 In 2016 before the election I guess an
00:05:41 2 actress who I've not heard of -- she's an
00:05:44 3 actress/rapper -- named Gina Rodriguez interviewed the
00:05:48 4 President at the time, Barack Obama, and asked him --
00:05:55 5 she said: Many dreamers and immigrants, slash -- I call
00:06:01 6 them citizens because in my mind that's what they are
00:06:04 7 because they contribute -- are afraid that if they show
00:06:09 8 up to vote that they'll be deported or their family will
00:06:12 9 be deported. Is that true?

00:06:14 10 And the President answered: No, it isn't,
00:06:18 11 because no one is entitled to look at -- inside the
00:06:23 12 ballot box and look inside the vote.

00:06:27 13 That was picked up by especially the
00:06:31 14 conservative media who's on Fox News a lot that the
00:06:35 15 President said that immigrants could vote. If you
00:06:43 16 Google it, if you Google Obama says immigrants can vote,
00:06:48 17 you'll get a lot of hits. So it was something that did
00:06:52 18 happen at the time, and that's what she was referring
00:06:54 19 to, because she saw that video. And quite honestly,
00:06:57 20 Your Honor, I watched the video. I had to watch it two
00:07:00 21 or three times because my initial reaction is that was,
00:07:03 22 in fact, what was said. It's just very confusing.

00:07:08 23 And Ms. Damatta is now 65. She has been
00:07:16 24 here for 46 years. She has gone through a couple of
00:07:19 25 abusive marriages, which -- she's a grandmother.

00:07:27 1 She has family here. She has grandchildren, children
00:07:31 2 here. I really -- and she never voted before. So she
00:07:39 3 had never done this before. And I quite honestly think
00:07:43 4 had she fully appreciated this, she would never have put
00:07:48 5 her status in this country at risk.

00:07:52 6 As the Court commented to the last
00:07:56 7 defendant, she does view this as a high privilege to be
00:07:58 8 in this country. She really does. And it's hard for
00:08:02 9 me, having gotten to know her, to think that she would
00:08:05 10 have put that at risk.

00:08:07 11 I can tell the Court she gets confused
00:08:09 12 easily. She does. And I've looked at -- I've -- in
00:08:17 13 fact, there is some indications in some of her medical
00:08:20 14 records that there may be incipient dementia. I don't
00:08:24 15 know. But from when the Board of Elections contacted
00:08:30 16 her, she told the truth: I'm not a citizen; I am not.

00:08:38 17 The cases I have done, one of the 3553
00:08:41 18 factors is the need for the sentence to be on a par with
00:08:47 19 similarly situated defendants. And to my knowledge
00:08:51 20 there have been two defendants out of all these cases
00:08:56 21 who have received jail sentences, and I think one was
00:09:00 22 the woman who was actually registering people, I think
00:09:04 23 was before this Court. The other was, I guess,
00:09:08 24 affirmatively informed that he could not vote and did
00:09:12 25 anyway. But the rest have been given probationary

00:09:15 1 sentences.

00:09:16 2 And I would just ask the Court that -- to
00:09:18 3 make an example of her by incarcerating her, a
00:09:23 4 65-year-old woman, to send a message, I think the
00:09:27 5 message is out. I think given these cases, which have
00:09:31 6 been publicized, it has been written about in the
00:09:34 7 Washington Post several times, with everything that's
00:09:41 8 going on now in Bladen County, with the new --
00:09:46 9 especially I think with the new voter ID law, I think
00:09:50 10 that's going to prevent this in the future. But I think
00:09:56 11 the deterrent effect is out; the word is out on this.
00:09:59 12 People know about this. So I think to -- again, to
00:10:02 13 single her out for incarceration I don't think would be
00:10:05 14 appropriate, and I would ask the Court not to do that.
00:10:08 15 Thank you.

00:10:12 16 THE COURT: Does she want to say anything?

00:10:15 17 THE DEFENDANT: Yes, Your Honor. I wanted
00:10:22 18 to say that I -- I was approached the year before
00:10:31 19 elections at church by all different people trying to
00:10:35 20 get me to register. And every time that they did, I had
00:10:42 21 left my ID in the truck or something; I didn't have it,
00:10:46 22 something, or I was in a hurry. And when I heard the
00:10:54 23 President saying that I -- anybody could vote, I not
00:11:03 24 consider I am a citizen really, but in a way, since I've
00:11:07 25 been here most of my life, and at the time I had 15

00:11:11 1 grandkids -- I have 17 now, I thought that if I could
00:11:16 2 vote, maybe my vote could change the future for my
00:11:20 3 grandkids, because things were not working out right.
00:11:26 4 So I was grateful to have the opportunity to vote. Not
00:11:30 5 that I was harming anybody; that's not the way I look at
00:11:33 6 it. Because I show my ID, my driver's license to the
00:11:37 7 Board of Elections. And they read the back, what it
00:11:41 8 says, that I am a permanent lawful resident. So I
00:11:46 9 believe that that is -- it was okay.

00:11:50 10 And my children were even happy when I
00:11:53 11 communicate that I had gotten okayed to vote. And they
00:11:59 12 very, very happy for me because they knew how I felt
00:12:03 13 about what was going on in the country, the country that
00:12:08 14 is -- I wasn't born in, but the only country that I had
00:12:12 15 lived since I'm an adult.

00:12:15 16 And I had never participated in any kind of
00:12:20 17 elections in the country I was born, but I've always
00:12:24 18 been here for all elections, and I never voted because I
00:12:29 19 didn't think it was right, until the President said that
00:12:33 20 it was okay. And I believe that everybody allow me to
00:12:41 21 by not stopping me, by sending me a voter card.

00:12:49 22 Three weeks after they send me a voter card,
00:12:52 23 and I walked into early voting, and they allow me to do
00:12:57 24 this. I wasn't sneaking in. I believe I was doing it
00:13:06 25 by the law.

00:13:07 1 And I'm sorry, like he said, that I took
00:13:09 2 somebody else's vote. But that was not my intentions.

00:13:14 3 THE COURT: Well, you answered yes to the
00:13:16 4 question: Are you a citizen of the United States of
00:13:23 5 America?

00:13:24 6 THE DEFENDANT: Because they say that I -- I
00:13:25 7 lived here, and I had five children in this country. I
00:13:30 8 raised them.

00:13:30 9 THE COURT: You know that doesn't make you a
00:13:32 10 citizen?

00:13:34 11 THE DEFENDANT: I know, ma'am. It was not a
00:13:37 12 sneaky thing. It was the way I been described what a
00:13:43 13 citizen is. It's not about -- and I had tried to become
00:13:47 14 a citizen, but I had not been able to many times. Three
00:13:52 15 times I had gone to Charlotte; I had paid, you know, the
00:13:56 16 paperwork to get fingerprint. And I give fingerprint
00:14:01 17 every ten years. I go through the whole process. And I
00:14:04 18 been told by Immigration: Why don't you become a
00:14:06 19 citizen? You don't have to go through all this. So
00:14:09 20 it's not like -- see, I learn, I educated myself.

00:14:15 21 THE COURT: Well, you know you're telling me
00:14:16 22 that repeatedly you were told that you were not a
00:14:19 23 citizen by members of the Immigration?

00:14:25 24 THE DEFENDANT: Yeah. Because when I went
00:14:26 25 to get my Green Card, every time I went to get my Green

00:14:30 1 Card they say: Just go and fill out the paperwork, pay
00:14:34 2 some money, then I'll be fine; you don't have to do this
00:14:36 3 anymore.

00:14:37 4 But, ma'am, it was when the President said
00:14:41 5 that, maybe I got confused, but I was -- I had so much
00:14:47 6 joy. I was so happy that I was finally -- maybe my vote
00:14:54 7 could help my grandkids or my kids. I wasn't being
00:14:59 8 sneaky. I wasn't cheating. I wasn't trying to ruin
00:15:03 9 this country. I was trying -- honest to God, Your
00:15:07 10 Honor, I know I did wrong, and I'm very sorry. And I'm
00:15:11 11 not sorry because I got caught because when they came to
00:15:14 12 my house, I wasn't scared. I told them exactly what
00:15:18 13 happened.

00:15:18 14 THE COURT: Okay. Thank you very much.

00:15:21 15 MR. GORDON: May I add one fast thing?

00:15:23 16 I can assure the Court she understands now,
00:15:26 17 you know, that regardless of what she may feel in her
00:15:30 18 heart, she is not a citizen. And I can assure the Court
00:15:34 19 she is not going to do this again as a legal permanent
00:15:38 20 resident. I can assure the Court of that. This has
00:15:41 21 been a very obviously stressful difficult experience for
00:15:45 22 her. And I think she appreciates that what she did was
00:15:48 23 not the thing to do at all.

00:15:52 24 I do find it ironic -- having done these
00:15:55 25 cases, I do find it ironic that there are people who are

00:15:59 1 not citizens who are wanting to vote, when the large
00:16:03 2 majority of the electorate who can vote don't exercise
00:16:07 3 their right in so many elections. I wish it weren't
00:16:11 4 that way. Thank you.

00:16:12 5 THE COURT: Did you want to say anything, or
00:16:15 6 have I heard you?

00:16:17 7 MR. KIELMANOVICH: I think the defendant's
00:16:18 8 statement it makes the case, Your Honor, for what I
00:16:21 9 recommended to the Court. I think at the end I think
00:16:24 10 she still -- she's happy that she voted. That's what
00:16:28 11 she wanted to do. And there are rules. And citizenship
00:16:32 12 is such an important right that we can't have people
00:16:36 13 that just make the decision: I lived here long enough;
00:16:41 14 I can get it if I want, but I don't have to get
00:16:50 15 citizenship; I'll just go ahead and vote.

00:16:52 16 I'm not asking for a significant active
00:16:55 17 sentence, but for a driving while impaired or other
00:16:58 18 serious misdemeanors people spend 24 hours in jail. I
00:17:02 19 think a right of this nature that has been violated
00:17:05 20 requires some punishment that is consistent with the
00:17:08 21 seriousness of the offense. And the vote has been
00:17:12 22 counted. There's just no going back. And that is one
00:17:17 23 of the things that I -- when I look at these cases
00:17:21 24 realize that there's just no affecting what happened.
00:17:28 25 And that's why the system has to work from the

00:17:31 1 beginning. And the system relies on the honesty of the
00:17:35 2 applicant. There's no one that is checking the
00:17:38 3 citizenship status of the applicant when registering to
00:17:43 4 vote. It's a sworn statement. It's under penalty of
00:17:46 5 perjury.

00:17:47 6 "A citizen of the United States: Yes or
00:17:49 7 no?"

00:17:49 8 "If the answer is no, do not continue
00:17:52 9 completing the form."

00:17:53 10 It cannot be more clear than that. And yet
00:17:55 11 we're seeing this pattern repeat itself.

00:17:59 12 Ideally there should be perhaps a better
00:18:02 13 system, way to confirm, but we trust people. Like when
00:18:08 14 we ask, now that we're in the tax season, the taxpayer
00:18:12 15 to send their forms. The Government trusts that most
00:18:14 16 people will be honest. And we expect them to be. So
00:18:21 17 voting is no different. It's a one-page form, and it's
00:18:25 18 not as complex as a tax return. And this defendant
00:18:27 19 breached the trust by doing so. Thank you, Your Honor.

00:18:30 20 THE COURT: I think she did it knowing that
00:18:32 21 she wasn't authorized to vote. And I don't detect a lot
00:18:36 22 of remorse here, though I appreciate Mr. Gordon's
00:18:39 23 efforts to suggest there is. But I think she is very
00:18:46 24 happy that she voted in that election and had the
00:18:49 25 opportunity, as she says, to effect change.

00:18:54 1 All right. Well, I'm ready to sentence you.
00:18:57 2 I've considered the advice of the Guidelines
00:18:59 3 specifically and generally and the factors set forth in
00:19:02 4 18, United States Code, Section 3553. There's a need to
00:19:06 5 discourage this type of conduct, to promote respect for
00:19:10 6 the law, to protect the integrity of our elections. And
00:19:16 7 I'm sentencing you to 14 days in custody. I think
00:19:20 8 that's a sentence that's sufficient but not greater than
00:19:22 9 necessary.

00:19:24 10 And I'm putting you on supervised release
00:19:26 11 for a year when you come out of custody. And during
00:19:30 12 that time you're going to be, if appropriate,
00:19:33 13 surrendered to an immigration official for deportation.
00:19:37 14 I don't know if that's going to happen or not, but if
00:19:40 15 you're ordered deported, you cannot come back into this
00:19:42 16 country. And you will consent to warrantless searches
00:19:46 17 of your house, your person, your motor vehicle.

00:19:50 18 And you'll pay a \$100 special assessment --
00:19:59 19 I think it's a \$25 special assessment, and a \$500 fine.
00:20:09 20 I'm not going to put interest on top of that.

00:20:12 21 Pursuant to the plea agreement, Count One is
00:20:14 22 now dismissed. The fine is due immediately. If you
00:20:20 23 can't pay it immediately, 60 days out of prison you'll
00:20:24 24 start paying it back at the rate of \$50 a month.

00:20:29 25 All right. I'll explain to you how you can

00:20:33 1 appeal in a moment.

00:20:33 2 Is there anything further, counsel?

00:20:36 3 MR. GORDON: Your Honor, could I first of
00:20:38 4 all request she be given a reporting date? She drove
00:20:43 5 herself here today. Her truck is here.

00:20:45 6 The other thing I'm concerned about is if
00:20:48 7 there would be some way to fashion this that she perhaps
00:20:51 8 spend the 14 days in lockup or something. I'm just
00:20:56 9 concerned about her safety as an elderly woman.

00:21:00 10 THE COURT: I'm sure they'll take that into
00:21:02 11 consideration. I'll just leave that to the Bureau of
00:21:05 12 Prisons. It may well be that your request is what they
00:21:09 13 adopt. But I just -- I'm going to leave it to them with
00:21:13 14 confidence that they will do the correct thing.

00:21:16 15 MR. GORDON: Would they have the option of
00:21:18 16 house arrest, or would the Court need to order that?

00:21:22 17 THE DEFENDANT: I don't think they would. I
00:21:25 18 do, but I'm not.

00:21:30 19 MR. GORDON: May I have a moment, Your
00:21:32 20 Honor?

00:21:32 21 (Discussion had off the record between the
00:21:35 22 defendant and defense counsel.)

00:21:37 23 MR. GORDON: One final question. Would the
00:21:39 24 Bureau of Prisons perhaps have the authority to have her
00:21:41 25 serve it on weekends? Can they structure it that way?

00:21:44 1 Or does it have to be consecutive?

00:21:46 2 THE COURT: I'm getting outside of my area
00:21:48 3 of knowledge. If I was to hazard a guess, I would guess
00:21:54 4 no.

00:21:56 5 Whether the Bureau would designate a local
00:21:59 6 jail as the place of confinement, I'm going to ask the
00:22:04 7 Marshal; that's the only thing I can think of that might
00:22:07 8 go on.

00:22:07 9 But is there anything else?

00:22:07 10 THE MARSHAL: From our prior experience,
00:22:11 11 Your Honor, if it's under 30 days, they'll keep her in a
00:22:15 12 local contractor; it will be a BOP-sanctioned
00:22:19 13 contractor, perhaps Piedmont, Cumberland County. But
00:22:25 14 they will assign her to a local jail.

00:22:27 15 MR. GORDON: Thank you, Your Honor.

00:22:29 16 THE COURT: That sounds reasonable.

00:22:33 17 How much time? Forty-five days to
00:22:37 18 self-report?

00:22:38 19 MR. GORDON: May I have a moment, Your
00:22:40 20 Honor?

00:22:43 21 (Discussion had off the record between the
00:22:46 22 defendant and defense counsel.)

00:23:08 23 MR. GORDON: Your Honor, she said she would
00:23:10 24 like to do this as soon as practicable so she can get it
00:23:14 25 behind her. So I don't know.

00:23:16 1 THE COURT: Okay. Well, I will allow her to
00:23:19 2 report to the prison when notified.

00:23:26 3 Ms. Tripp, does that require an amendment to
00:23:28 4 the form?

00:23:33 5 THE CLERK: Yes, ma'am.

00:23:36 6 (Discussion had off the record.)

00:23:51 7 THE COURT: What's today, the 11th?

00:23:53 8 MR. GORDON: Yes.

00:23:55 9 THE COURT: I can say no sooner than
00:23:56 10 tomorrow. I don't think it's going to happen that soon.
00:24:01 11 I could put Monday.

00:24:03 12 MR. GORDON: Monday might be better. Thank
00:24:05 13 you.

00:24:25 14 THE COURT: Could you come forward and
00:24:26 15 collect the order of surrender.

00:24:29 16 MR. GORDON: May I approach, Your Honor?

00:24:30 17 THE COURT: Yes, sir.

00:24:55 18 MR. GORDON: May I approach, Your Honor?

00:24:56 19 THE COURT: Yes, sir.

00:24:57 20 Now, you can appeal if you think there's
00:25:00 21 something really wrong with what has happened here, if
00:25:02 22 you think there's something really wrong with the
00:25:04 23 conviction or with the sentence, but you do need to move
00:25:07 24 quickly. A defendant usually only has 14 days from the
00:25:10 25 date that the judgment goes on the Court's docket. If

00:25:15 1 you cannot afford the cost of an appeal, you can apply
00:25:18 2 for permission to appeal for free. And if you request,
00:25:21 3 the clerk will fill out the appeal paperwork for you.

00:25:24 4 Any questions?

00:25:26 5 THE DEFENDANT: No, Your Honor.

00:25:27 6 THE COURT: All right. Thank you very much.

7 (Concluded at 3:07 p.m.)

8 - - -

9

10 **C E R T I F I C A T E**

11

12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled
14 matter.

15

16 /s/ Tracy L. McGurk_____

____6/6/2019____

17 Tracy L. McGurk, RMR, CRR

Date

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